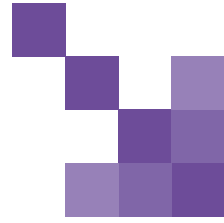


# Doing business in United States: Wisconsin



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## LEGAL SYSTEM

1. What is the legal system (civil law, common law or a mixture of both)?

Wisconsin has a mixture of statutory and common law.

## FOREIGN INVESTMENT

2. Are there any restrictions on foreign investment (including authorisations required by central or local government)?

A foreign corporation cannot transact business in Wisconsin until it obtains a certificate of authority (*Wis Stat §180.1501*). Once authorised, the foreign corporation must maintain a registered office and registered agent in Wisconsin (*Wis Stat §180.1507*).

3. Are there any exchange control or currency regulations?

Wisconsin has no exchange control or currency regulations.

4. What grants or incentives are available to investors? Are any of these aimed specifically at foreign investors?

State and local governments provide some incentives to encourage investment, including sizable investor, enterprise development zone, technology zone and community development zone tax credits.

## BUSINESS VEHICLES

5. What is the most common form of business vehicle used by foreign companies to conduct business in your jurisdiction? In relation to this vehicle, please provide details on:

- Registration formalities (including timing).
- Minimum (and maximum) share capital.
- Whether shares can be issued for non-cash consideration, such as assets or services (and any formalities).
- Any restrictions on the rights that can attach to shares.
- Any restrictions on foreign shareholders.
- Management structure and any restrictions on foreign managers.
- Directors' liability.
- Parent company liability.
- Reporting requirements (including filing of accounts) and cost of compliance.

The most common forms of business vehicle used by foreign companies are corporations and limited liability companies (LLC):

- **Registration formalities.** Corporations and LLCs are organised by filing articles of association (articles) with the Wisconsin Department of Financial Institutions (WDFI). Filing generally can be completed within one day. In addition, each entity must file a business registration statement with the Wisconsin Department of Revenue to obtain a business licence.
- **Share capital.** There are no limits on share capital.

- **Non-cash consideration.** A corporation's board may authorise shares for consideration consisting of any tangible or intangible property or benefit to the corporation (*Wis Stat §180.0621*).

A member's contribution to a LLC may consist of cash, property or services rendered, or promissory notes or other written obligations to provide cash or property or to perform services (*Wis Stat §183.0501*).

- **Rights attaching to shares.** The rights attaching to a corporation's shares are set out in its articles. Wis Stat Chap 180 provides default provisions if the articles are silent with respect to rights attaching to shares.

The rights of LLC membership interests typically are set out in an operating agreement. Wis Stat Chap 183 sets out default provisions.

- **Foreign shareholders.** There are no restrictions on foreign shareholders or LLC members.
- **Management structure.** The board of directors exercises all corporate powers (*Wis Stat §180.0801*). Management of a LLC must generally be vested in the members (*Wis Stat §183.0401*).
- **Directors' liability.** Wisconsin generally provides for mandatory indemnification of directors of corporations and LLC managers and members (*Wis Stat §180.0851 and §183.0403*).
- **Parent company liability.** Parent companies are not generally liable for subsidiaries' acts.
- **Reporting requirements.** Corporations and LLCs must file an annual report with the WDFI. The fee accompanying that report is based on the type of entity. Foreign corporations are required to pay a set fee for increases in contributed capital.

## EMPLOYEES

### 6. What are the main laws regulating employment relationships?

The main laws governing regulating employment relationships in Wisconsin are as follows:

- **Wisconsin Fair Employment Act (*Wis Stat § 111.31*) (WFEA).** The WFEA defines employment

discrimination to include discrimination in promotion, compensation or employment on certain defined grounds, such as:

- race;
- sex;
- age;
- making a complaint or assisting in any proceeding under the WFEA.

- **Wisconsin Family or Medical Leave Act (*Wis Stat § 103.10*) (FMLA).** The FMLA contains provisions different to and, in some instances, more liberal than counterpart federal law. It requires employers to provide qualified employees with time off for certain health and family reasons. The employee must be allowed to return to the same position if it is available or an equivalent position.
- **Wage claims requirements.** Employers must pay wages due and owing to employees (*Wis Stat Chap 109*). Wages are defined broadly.
- **Government posting requirements.** Employers must display posters about various employment matters (*Wis Stat §§ 109.09(7), 109.075(7), 103.10(4) and 111.37(3)*).
- **Wisconsin Employment Peace Act (*Wis Stat §111.01*) (WEPA).** The WEPA grants employees certain rights, such as the right to join labour unions and to engage in concerted activities for the purpose of collective bargaining (*Wis Stat §111.04*).
- **Minimum wage requirements.** This law applies to all private and public employers, including non-profit organisations. All wages paid must be at least a living wage, unless one of the limited statutory exceptions applies.
- **Unemployment insurance.** Employers make quarterly contributions based on each employees wage, up to a statutorily determined maximum. Each employer's contribution rate varies in accordance with its own past history of unemployment claims. Unemployment benefits can only be claimed for up to 26 weeks. Under certain circumstances, employees may be disqualified from receiving benefits.

- **Worker's Compensation Act (*Wis Stat Chap 102*) (WCA).** The WCA protects workers who are injured or ill because of work activities through a compulsory insurance scheme for employees. Employees' injuries are categorised, and each category has a maximum possible damages award. If the employer refuses to rehire an employee who suffered a compensable injury, the employer may be liable for paying lost wages of up to one year of back pay.
- **Overtime pay requirements.** Employees must be paid 1.5 times the regular rate of pay for all hours worked above 40 hours per week if they are employed in certain jobs.

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**7. Is a written contract of employment required? Are any agreements and/or implied terms likely to govern the employment relationship?**

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A written contract of employment is not required.

If there is no employment contract or collective bargaining agreement, employment is at-will. However, statements made in an employee handbook may alter the at-will employment status.

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**8. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?**

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Employees are not entitled to management representation or to be consulted in relation to corporate transactions.

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**9. How is the termination of individual employment contracts regulated?**

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Disputes over termination of employment typically are resolved through litigation or arbitration.

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**10. Are redundancies/mass layoffs regulated? If so, please give details.**

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An employer of 50 or more people who decides to cease doing business or conduct a mass layoff must notify the state at least 60 days before doing so (*Wis Stat § 109.07(1m)*).

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**11. Do foreign employees require work permits and/or residency permits? If so, how long does it take to obtain them and how much do they cost?**

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Foreign employees do not require work or residency permits.

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**TAX**

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**12. In relation to employees, what constitutes tax residency in your jurisdiction?**

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According to the Wisconsin Department of Revenue, an individual's legal residence (domicile) is their true, fixed, and permanent home where they intend to remain permanently and indefinitely and to which, whenever absent, they intend to return.

By statute, certain contacts (such as holding deposit accounts at Wisconsin financial institutions) do not, by themselves, create Wisconsin residency.

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**13. What income tax or social security contributions must the following pay:**

- **Tax resident employees?**
  - **Non-tax resident employees?**
  - **Employers, in relation to their employees?**
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**Resident employees**

Wisconsin imposes an income tax on resident individuals, estates and trusts on income from all sources. The personal income tax rates for taxable years beginning after 2000 range from 4.6% to 6.75%.

Wisconsin has income tax reciprocity agreements with five states (Indiana, Illinois, Kentucky, Michigan and Minnesota). Under these agreements, Wisconsin gen-

erally does not tax the personal service income of residents of these states earned in Wisconsin and these states do not tax the personal service income of residents of Wisconsin earned in these states.

### Non-resident employees

Wisconsin imposes an income tax on non-resident individuals, estates, and trusts on income derived from property located, services performed or business transacted in Wisconsin.

The tax brackets are prorated for a non-resident or a part-year resident by multiplying the brackets by a fraction, the numerator of which is Wisconsin adjusted gross income and the denominator of which is federal adjusted gross income.

### Employers

Wisconsin employers must generally withhold income tax from:

- Wisconsin resident employees, regardless of where the services are performed.
- Non-residents for services performed in Wisconsin, with certain limited exceptions.

Employers must also make certain social security payments (see *Question 6, Unemployment insurance and Worker's Compensation Act (Wis Stat Chap 102) (WCA)*).

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## 14. In relation to business vehicles, what constitutes tax residency in your jurisdiction?

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See *Question 15*.

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## 15. Please give details on the main taxes that potentially apply to a tax resident business vehicle (including rates).

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### Corporate income and franchise tax

Wisconsin imposes a franchise tax based on Wisconsin source income of foreign or domestic corporations.

Corporations not subject to the franchise tax, must pay income tax if they either:

- Own property in Wisconsin.
- Engage exclusively in inter-state or foreign commerce in Wisconsin.

Most corporations are subject to the franchise tax rather than income tax.

The corporate franchise and income taxes are both at the flat rate of 7.9% of Wisconsin taxable income (see *below, Taxable income*).

### Taxable income

Wisconsin taxable income generally is determined according to the Internal Revenue Code, with a number of Wisconsin statutory modifications. For corporations that are engaged in business solely in Wisconsin, 100% of their income is taxable.

For corporations engaged in business in and outside Wisconsin, the resulting amount of income is multiplied by an apportionment formula, which takes into account payroll, property and sales.

Wisconsin is phasing in a single factor formula (sales only), which will be fully implemented for taxable years beginning after 31 December 2007. Special apportionment rules apply to certain industries.

### S corporations

S corporations generally are pass-through entities, but may be subject to corporate franchise or income tax under certain limited circumstances.

### LLCs and partnerships

No Wisconsin franchise or income tax is imposed on a LLC or a partnership; however, owners of these entities generally are subject to tax on their share of the entity's income derived from property located or business transacted in Wisconsin. The taxation of the owners depends on whether they are residents or non-residents of Wisconsin (see *Question 13*).

### Pass-through entity withholding for non-resident owners

Pass-through entities that have Wisconsin income allocable to a non-resident partner, member, shareholder or beneficiary generally must pay a withholding tax with respect to the non-resident's share of distributable income.

### Sales and use tax

The Wisconsin sales and use tax is 5% on applicable transactions. In addition, many Wisconsin counties are authorised to impose additional taxes, which for collection purposes are piggybacked on the state tax (generally amounting to an additional 0.5% to 0.6%). In general, all retail transfers (both sales and leases) of tangible personal property by retailers are subject to tax, unless an exemption applies. By contrast, only certain specific services are taxable, and even then exemptions may apply.

### Property tax

Real and personal property is subject to taxation, with certain exemptions. The rate of taxation varies by jurisdiction.

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#### 16. How are the activities of non-tax resident business vehicles taxed?

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See *Question 15*.

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#### 17. Please explain how each of the following is taxed:

- **Dividends paid to foreign corporate shareholders.**
  - **Dividends received from foreign companies.**
  - **Interest paid to foreign corporate shareholders.**
  - **Intellectual property (IP) royalties paid to foreign corporate shareholders.**
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- **Dividends paid.** Dividends paid to foreign corporate shareholders may be taxed if the foreign corporate shareholder is subject to Wisconsin corporate franchise or income tax. However, a dividends received deduction may be available (*Wis Stat §71.26(3)(j)*).

- **Dividends received.** Dividends received from foreign companies are included as income and subject to corporate franchise or income tax in the same way as any other income earned in Wisconsin. However, a dividend received deduction for corporations may be available (*Wis Stat §71.26(3)(j)*).
- **Interest paid.** Interest paid to foreign corporate shareholders may be taxed if the foreign corporate shareholder is subject to Wisconsin franchise or income tax.
- **IP royalties paid.** IP royalties may be taxed if the foreign corporate shareholder is subject to Wisconsin franchise or income tax (*Wis Admin Code §Tax 2.82*).

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#### 18. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)? If so, please give details.

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Wisconsin does not have thin capitalisation rules.

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#### 19. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

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Wisconsin does not require or permit the filing of consolidated returns.

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#### 20. Are there any transfer pricing rules? If so, please give details.

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Wisconsin does not have transfer pricing rules.

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#### 21. How are imports and exports taxed?

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Wisconsin does not tax imports or exports.

## COMPETITION

### 22. Are restrictive agreements and practices regulated by competition law in your jurisdiction? If so, please give brief details.

Wis Stat Chap 133 is Wisconsin's equivalent to the federal Sherman Act and like its federal counterpart governs trusts and monopolies.

General trade regulation also is administered and enforced under Wis Stat §100.20, which is modelled after the Federal Trade Commission Act and broadly prohibits unfair methods of competition and unfair trade practices.

Wis Stat § 103.465 specifically governs restrictive covenants in employment contracts and they are enforceable only if they are reasonably necessary for the protection of the employer and narrowly tailored. Any unreasonable restraint is void and unenforceable even as to any part of it that would be reasonable. Two years or less is typically found to be a reasonable time period, while the specified territory can be a geographical limitation or a list of restricted competitors/customers.

## INTELLECTUAL PROPERTY

### 23. Please outline the main intellectual property rights that are capable of protection in your jurisdiction. In each case, please state:

- **Nature of right.**
- **How protected.**
- **How enforced.**
- **Length of protection.**

#### Patents

With some exceptions, patent rights are governed by federal law.

#### Trade marks

- **Nature of right.** A mark is defined as any label, trade mark, trade name, term, design, pattern, model, device, shop mark, drawing, specification, designation or form of advertisement that is both (*Wis Stat §132.01*):

- adopted or used by any person to designate, make known or distinguish any goods or service as having been made, prepared or provided by that person;
- registered by that person under Wis Stat §132.01.

- **How protected.** To be protected, a trade mark must be registered. It is unlawful for any person to use, with intent to deceive, another person's registered mark or any counterfeit mark in the conduct of business without the express consent, licence or authority (*Wis Stat Chap 132*).

Trade marks and trade names are also protected under common law.

- **How enforced.** Wis Stat Chap 132 sets out:
  - the cause of action for infringement of any mark;
  - the penalties for violation.

Common law protection is available as long as the common law trademark is in use and the protection is handled through litigation.

- **Length of protection.** Trade mark registrations are valid for ten years and renewable for additional ten-year terms.

#### Registered designs

Designs fall under the definition of marks covered by Wis Stat §132 (*see above, Trade marks*).

#### Copyright

Copyrights are governed by federal law.

#### Confidential information

- **Nature of right.** With minor modifications, Wis Stat §134.90 adopts the Uniform Trade Secret Act and defines trade secret information as that which both:
  - derives independent actual or potential economic value from not being generally known by and readily ascertainable by other persons;

- is subject to efforts to maintain its secrecy.
- **How protected.** Confidential information is automatically protected and there is no registration requirement.
- **How enforced.** The right holder can file a civil action against a party that has misappropriated it.
- **Length of protection.** There is no time limit on confidential information protection.

## MARKETING AGREEMENTS

### 24. Are marketing agreements regulated in your jurisdiction? If so, please give brief details in respect of the following arrangements:

- **Agency.**
- **Distribution.**
- **Franchising.**

- **Agency.** There are no specific Wisconsin laws on agency with respect to marketing agreements. In general, common law principles of agency apply to marketing agreements.
- **Distribution.** The main distribution issue that arises in Wisconsin is whether the foreign entity whose products are being distributed will be required to qualify to do business or to pay or collect tax. This question is dependant on the nature of the relationship with the distributor:
  - if the relationship is that of principal and agent, acts of the agent are deemed to be acts of the foreign principal;
  - if the relationship is one of independent contractor, the foreign entity will not be treated as acting through the distributor.

The Wisconsin Fair Dealership Law (*Wis Stat Chap 135*), governs dealerships and gives dealers rights against the entity granting the dealership.

- **Franchising.** An offer of a franchise within Wisconsin must often be registered. Circumstances surrounding registration and other regulatory requirements for franchising are extensive and need to be thoroughly considered (*Wis Stat Chap 553*).

## E-COMMERCE

### 25. Are there any laws regulating e-commerce (such as electronic signatures and distance selling)? If so, please give brief details.

Wis Stat Chap 137 regulates aspects of e-commerce such as electronic signatures, and electronic transactions and records. Electronic signatures carry the same legal enforceability as a handwritten signature.

## DATA PROTECTION

### 26. Are there any data protection laws? If so, please give brief details.

Certain businesses possessing personal information about an individual must notify that individual when the information is accessed by a person who the individual has not authorised to do so (*Wis Stat § 895.507*).

## PRODUCT LIABILITY

### 27. Are there any laws regulating product liability and product safety? If so, please give brief details.

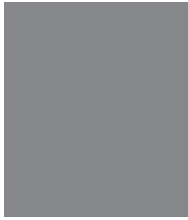
Strict liability and negligence constitute alternative theories of recovery for product liability claims.

Although Wisconsin has abolished the doctrine of assumption of risk, contributory negligence is a viable defence to strict liability actions and a claimant's negligence is a bar to recovery if it is greater than the negligence of the individual defendant, as measured on a percentage basis.

Wisconsin is a minority *Palsgraf* jurisdiction, in that the claimant is not required to show that the ultimate injury sustained was a foreseeable consequence of the defendant's breach of duty.

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